STATE OF MICHIGAN

COURT OF APPEALS

CHRISTOPHER BELK,

Plaintiff-Appellant,

v

RONALD CARTER, d/b/a STAR DEMOLITION,

Defendant-Appellee.

UNPUBLISHED
July 28, 2000

No. 218429
Calhoun Circuit Court
LC No. 98-000003-NO

Before: Saad, P.J., and Hoekstra and Markey, JJ.

PER CURIAM.

Plaintiff appeals by of right an order granting defendant's motion for summary disposition. We affirm.

This case involves claims of negligence against defendant after an outer-locking ring from a multi-piece tire/rim assembly of a front-end loader dislodged from the loader, struck plaintiff, and resulted in significant injuries to plaintiff. The trial court granted defendant's motion for summary disposition pursuant to MCR 2.116(C)(10). The sole issue in this case is whether defendant was entitled to summary disposition. This Court reviews the trial court's grant of summary disposition de novo. *Spiek v Dep't of Transportation,* 456 Mich 331, 337; 572 NW2d 201 (1998). Therefore, this Court must review the record to determine whether the movant was entitled to judgment as a matter of law. *Morales v Auto-Owners Ins Co,* 458 Mich 288, 294; 582 NW2d 776 (1998).

Motions under MCR 2.116(C)(10) test whether there is factual support for the plaintiff's claim. *Spiek, supra*. The court considers the affidavits, pleadings, depositions, admissions, and other evidence submitted to determine whether a genuine issue of any material fact exists to warrant a trial. *Ritchie-Gamester v City of Berkley,* 461 Mich 73, 76; 597 NW2d 517 (1999). Both this Court and the trial court must resolve all reasonable inferences in the nonmoving party's favor. *Id.* For a motion under MCR 2.116(C)(10), the moving party first must specifically identify the matters that have no disputed factual issues. *Quinto v Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996). The party opposing the motion then has the burden of showing with evidentiary materials that a genuine issue of

disputed fact exists. *Id.* When the burden of proof at trial would rest on the nonmoving party, as in this case, the nonmovant may not rest upon mere allegations or denials in their pleadings, but must, by documentary evidence, set forth specific facts showing that there is a genuine issue for trial. *Id.* "A motion for summary disposition is properly granted when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." *Auto-Owners Ins Co v Allied Adjusters & Appraisers, Inc*, 238 Mich App 394, 397; 605 NW2d 685 (1999).

Plaintiff argues that defendant was negligent in failing to recognize that there was a problem with the front left side tire, which was attached to the outer-locking ring that injured plaintiff, and in failing to contact a professional tire repair service to remove and repair the tire. Plaintiff also argues that defendant should have known that the outer-locking ring could become unseated if the tire deflated and that the outer-locking ring could dislodge from the tire if it was unseated. However, as defendant correctly asserts in his motion, the evidence in the record has not created any genuine issue of material fact on these issues, and when considering the undisputed material facts, we do not find support for plaintiff's claims of negligence.

First, defendant correctly asserts that the evidence does not show that there was any serious problem with the tire/rim assembly of the front-end loader at any time that would have warned defendant of a potential problem. Certainly, the evidence shows that the tire was low on pressure and that defendant had been working in an area where debris could have punctured the tire or tube in the tire. However, the evidence does not show that there was any serious problem with the tire or that the tire was near or completely flat at any time. In fact, contrary to plaintiff's argument, plaintiff provided clear testimony that on the morning of the accident the tire in question was not completely flat; but it was just low on air.

Further, plaintiff has failed to produce any evidence to prove that under the circumstances, defendant should have inspected the tire or sought professional assistance before he pumped air into the tire. The testimony shows that defendant had experience with front-end loaders, that he had witnessed others change the tires on a front-end loader, and that he was aware that the tire/rim structure of a front-end loader involved multiple parts and required a special tool to change the tire. However, even with this experience, plaintiff was unable to produce any witness to state that defendant should have contacted a professional service before simply pumping air into the tire. In this case, expert testimony regarding whether defendant as a front-end loader operator should have performed these actions is generally required. *Phillips v Mazda Motor Mfg Corp*, 204 Mich App 401, 409-410; 516 NW2d 502 (1994) (where the negligence claimed is not a matter of common knowledge and interpretation, expert testimony is necessary to establish the applicable standard of conduct and its breach). Plaintiff failed to produce testimony to create a genuine issue of material fact, and as a result, his claims of negligence on this issue fail.

Defendant also correctly asserts that there is no evidence to support that he should have known that the outer-locking ring could become unseated and dislodge or that he should have noticed that the ring had become unseated. Plaintiff correctly states that his expert, Bobby Batterson, a tire repair expert from Glen's Tire Center, testified that if the tire were very low on air (to about five to ten pounds), the outer-locking ring could become unseated, and that if the outer ring was not seated

properly, the ring could fly off if air was pumped into the tire. However, there is no testimony to support either that the outer locking ring became unseated or that the tire was ever deflated to five to ten pounds so that the outer-locking ring could become unseated.

In addition, plaintiff also failed to produce evidence to show that defendant should have known that the outer-locking ring could become unseated or that defendant should have noticed if the ring had become unseated. The testimony presented by plaintiff was that it was unknown whether defendant as a front-end loader operator should have recognized an unseated ring. Plaintiff again needed expert testimony to show that defendant should have recognized the unseated ring and should have known about this potential problem. A party opposing a motion for summary disposition must present more than mere speculation to create a genuine issue of material fact. *Detroit v Gen'l Motors Corp*, 233 Mich App 132, 139-140; 592 NW2d 732 (1998), quoting *Libralter Plastics, Inc v Chubb Group of Ins Cos*, 199 Mich App 482, 486; 502 NW2d 742 (1993). In this case, plaintiff is asking this panel to speculate that defendant was negligent without providing any supporting testimony of defendant's negligence. Again, without such evidence, plaintiff's claims of negligence against defendant fail. As a result, we affirm the trial court's decision to grant defendant's motion for summary disposition.

We affirm.

/s/ Henry William Saad
/s/ Joel P. Hoekstra
/s/ Jane E. Markey